

## **ARTICLE 8**

### **GRIEVANCE PROCEDURE**

#### **A. General.**

1. A grievance is defined as a written complaint alleging that there has been a violation, misinterpretation or misapplication of any condition of employment contained in this Agreement, or of any rule, policy or regulation of the Employer deemed to be a violation of this Agreement or a claim of discipline without just cause. Nothing shall prohibit the grievant from contending that the alleged violation arises out of an existing mutually accepted past practice. The concept of past practice shall not apply to matters which are solely operational in nature.

2. Employees shall have the right to present grievances in person or through a designated MSEA Representative at the appropriate step of the grievance procedure. No discussion shall occur on the grievance until the designated MSEA Representative has been afforded a reasonable opportunity to be present at any grievance meetings with the employee(s). Upon request, a supervisor will assist a grievant in contacting the designated Steward or Representative. Any settlement reached shall be communicated to MSEA and shall not be inconsistent with the provisions of this Agreement. At a Step One Grievance Conference the Representative shall be the Steward, or an MSEA Staff Representative if requested by the grievant or Steward. At a Step Two Grievance Conference the MSEA Representative shall be the Steward and an MSEA Staff Representative if so requested.

3. Only related subject matters shall be covered in any one grievance. A grievance shall contain the clearest possible statement of the grievance by indicating the issue involved, the relief sought, the date the incident or alleged violation took place, and the specific Section or Sections of this Agreement involved, if any. The grievance shall be presented to the designated employer representative in quadruplicate (four copies) on a mutually agreed upon form furnished by the Employer and MSEA and signed and dated by the grievant(s).

4. All grievances shall be presented promptly and no later than fifteen (15) week days from the date the grievant knew or could reasonably have known of the facts or the occurrence of the event giving rise to the alleged grievance. Week days, for the purpose of this Article, are defined as Monday through Friday inclusive, excluding holidays.

5. When an individual grievant(s) or MSEA respectively is satisfied with the resolution of a grievance offered by the Employer, processing the grievance will end, provided that the resolution is consistent with this Agreement.

6. MSEA, through an authorized Officer or Staff Representative, may grieve an alleged violation concerning the application or interpretation of this Agreement in

the manner provided herein. Such grievance shall identify, to the extent possible, employees affected. MSEA may itself grieve alleged violations of Articles conferring rights solely upon the Association.

**7.** Grievances which by nature cannot be settled at a preliminary step of the grievance procedure may, by mutual waiver of a lower step, be filed at an agreed upon advanced step where the action giving rise to the grievance was initiated or where the relief requested by the grievance could be granted.

**8.** Group grievances are defined as, and limited to, those grievances which cover more than one employee and which pertain to like circumstances and facts for the grievants involved. Group grievances shall, insofar as practical, name all employees and/or classifications and all work locations covered and may, by mutual agreement at step one be submitted to Step Two . Group grievances shall be so designated at the first appropriate Step of the grievance procedure, although names may be added or deleted prior to a third step hearing. Group grievances involving more than one Department shall identify all Departments involved. MSEA shall, at the time of filing such a grievance, also provide a copy to the Office of the State Employer.

**9.** It is expressly understood and agreed that the specific provisions of this Agreement take precedence over policy, rules, regulations, conditions and practices contrary thereto, except as otherwise provided in the Civil Service Rules and Regulations.

**10.** There shall be no appeal beyond Step Two on initial probationary service ratings or involuntary separation of initial probationary employees which occur during or upon completion of the probationary period, except that grievances alleging unlawful discrimination against a probationary employee may be appealed by MSEA to Step Three.

**11.** Counseling memoranda, annual service ratings and reprimands are not appealable beyond Step Two, but less than satisfactory interim service ratings grievances of employees having completed the initial probationary period are appealable to Step Three.

**12.** In the Department of Corrections only, written reprimands may be appealed to arbitration only:

- When a written reprimand has been timely grieved, and,
- the grievance has not been answered at Step Two prior to discipline being appealed to arbitration, and,
- that written reprimand is used to support further progressive discipline (which discipline would be by definition appealable to arbitration), and,

- which discipline is, in fact, appealed to arbitration,

the merits of the grievance concerning that written reprimand may be heard during arbitration.

All other written reprimands are not eligible for appeal to arbitration.

**13.** The parties agree that as a principle of contract interpretation employees shall give full performance of duty while a non-dismissal and non-suspension grievance is being processed.

**14.** Grievances filed before the effective date of this Agreement shall be concluded in accordance with the Grievance and Appeals Procedure then in effect.

## **B. Grievance Steps.**

**Step One.** Informal discussion of complaints between employees and/or Stewards and supervisors is encouraged prior to filing of grievances. Within five (5) week days of receipt of the written grievance from the employee(s) or the designated MSEA Representative, the designated employer representative will, on his/her own initiative or in response to a request from MSEA or the employee, schedule a meeting with the employee(s) and/or the designated MSEA Representative to discuss the grievance, and return a written decision to the employee(s) and the MSEA Representative. Grievance meetings at Step One shall normally be held during the regularly scheduled hours of the grievant.

**Step Two.** If not satisfied with the Employer's answer in Step One, to be considered further, the grievance shall be appealed to the departmental Appointing Authority or his/her designee within ten (10) week days from receipt of the answer in Step One. The Employer Representative(s) may meet with the employee(s) and the designated MSEA Representative in grievances concerning disciplinary issues, to discuss and attempt to resolve the grievance. Such meetings shall take place concerning disciplinary grievances involving suspension, discharge, demotion or less than satisfactory service rating. In grievances concerning primary contract interpretation, which excludes those grievances involving discipline and formal counseling, the Employer Representative may meet with the designated MSEA Representative to discuss and attempt to resolve the grievance. It is the parties' intent that such meetings will involve discussion and consideration of the grievance on the basis of a full disclosure of the relevant facts and documentation by both parties, however, such disclosure shall not limit the parties' rights as described in Section H of this Article. All Step Two denials of disciplinary grievances involving suspension, discharge, demotion, mandatory change of residence or less than satisfactory service rating shall be accompanied by documentation that supports the action, if

not previously provided to a Union Representative. The written decision of the Employer will be placed on the grievance form by the departmental Appointing Authority or his/her designee and returned to the grievant(s) and the designated MSEA Representative within fifteen (15) week days from the date of receipt of the grievance form at Step Two.

**Step Three.** If not satisfied with the Employer answer in Step Two, only MSEA may appeal the grievance to arbitration within twenty-five (25) week days from the date of the Department's answer in Step Two. If an appeal to arbitration is filed by MSEA, concurrent notice shall be provided to the department and, in primary contract interpretation grievances only, to the Office of the State Employer. All appeals to arbitration of disciplinary grievances involving suspension, discharge, demotion, or less than satisfactory service rating shall be accompanied by documentation in accordance with Section H of this Article. If an unresolved grievance is not timely appealed to arbitration, it shall be considered terminated on the basis of the Employer's Step Two answer without prejudice or precedent in the resolution of future grievances. The parties may propose consolidation of grievances containing similar issues.

At the request of MSEA following a second step denial, a Staff Representative of MSEA and of the Department where the grievance originates will discuss the matter. An effort shall be made in such discussions to arrive at fair and equitable grievance settlements to avoid the necessity of arbitration. Such settlements, if reached, shall be confirmed in writing when agreed to by the Employer and MSEA.

The parties agree to utilize the expedited arbitration process as outlined below, administered by the American Arbitration Association (AAA). For cases involving dismissal, disciplinary reassignment, mandatory change of residence, and suspension of fifteen (15) work days or more, the scheduled hearing shall be held within sixty (60) calendar days of filing the arbitration demand. For cases involving other disciplinary suspensions, demotions or less than satisfactory service ratings, the scheduled hearing shall be held within one hundred eighty (180) calendar days of the filing.

The parties shall select an arbitrator in accordance with the following procedure:

Prior to the time MSEA files an arbitration demand, the parties will 1) schedule a mutually acceptable preferred hearing date and alternate hearing date, to hear the grievance, and, 2) notify AAA of the selected dates. The process in numbers 1 and 2 above will normally be completed in five (5) work days.

AAA shall provide the parties with a list of fifteen (15), but not less than nine (9) arbitrators who are available on the selected date. Each party may strike

up to one-third of the names provided and return to AAA, normally, within five (5) work days. Names not struck are considered mutually acceptable.

AAA will randomly select an arbitrator from the remaining names to conduct the arbitration hearing.

The hearing shall be conducted under the rules of the American Arbitration Association.

Any written briefs or closing arguments submitted by the parties shall be postmarked no later than fifteen (15) work days from the conclusion of the arbitration hearing.

The arbitrator shall have thirty (30) calendar days following closure of the record of the arbitration hearing, to issue a decision.

The parties, which for MSEA is the President or President's designee, may modify any period of time by mutual agreement.

The Federal Mediation and Conciliation Service or Michigan Employment Relations Commission may be used by mutual agreement.

The expenses and fees of the Arbitrator shall be borne by the losing party. The arbitrator shall have the authority to prorate the cost where a decision does not clearly state which party is the losing party. The losing party shall pay the filing fee. The cost of the hearing room, if any, shall be shared equally by the parties to the arbitration. The expenses of a court reporter shall be borne by the party requesting the reporter unless the parties agree to share such costs.

The Arbitrator shall only have the authority to adjust grievances in accordance with this Agreement as permitted in the Civil Service Rules and Regulations. The Arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of the Civil Service Rules and Regulations or this Agreement and shall not make any award which in effect would grant MSEA or the Employer any rights or privileges which were not obtained in the negotiation process. The authority of the Arbitrator shall remain subject to and subordinate to the limitations and restrictions on subject matter and personal jurisdiction in the Civil Service Rules and Regulations.

The decision of the Arbitrator will be final and binding on all parties to this Agreement, except as otherwise provided in the Civil Service Rules and Regulations. Arbitration decisions shall not be appealed to the Civil Service Commission, except that any person may file with the State Personnel Director a complaint that the Arbitrator's decision has been applied or interpreted to violate or otherwise rescind, limit, or modify a Civil Service Rule or Regulation governing a prohibited subject of bargaining. When the Arbitrator declares a bench

decision, such decision shall be rendered in writing within fifteen (15) calendar days from the date of the arbitration hearing. The written decision of the Arbitrator shall be rendered within thirty (30) calendar days from the closing of the record of the hearing.

### **C. Time Limits.**

Grievances may be withdrawn once without prejudice at any step of the grievance procedure. A grievance which has not been settled and has been withdrawn may be reinstated based on new evidence not previously available within thirty (30) week days from the date of withdrawal.

Grievances not appealed within the designated time limits in Steps One or Two of the grievance procedure will automatically result in the grievance being considered closed. Grievances not answered by the Employer within the designated time limits in any step of the grievance procedure shall be considered automatically appealable and processed to the next step. Where the Employer does not provide the required answer to a grievance within the time limit provided at Steps One or Two, the time limits for filing at the next step shall be extended for ten (10) additional week days. The time limits at any step or for any hearing may be extended by written mutual agreement of the parties involved at that particular step.

If the Employer Representative with whom a grievance appeal must be filed is located in a city other than that in which the grievance was processed in the preceding step, the mailing of the grievance appeal form shall constitute a timely appeal if it is postmarked within the appeal period. Similarly, when an Employer answer must be forwarded to a city other than that in which the Employer Representative works, the mailing of the answer shall constitute a timely response if it is postmarked within the answer period.

### **D. Retroactivity.**

Settlement of grievances may or may not be retroactive as the equities of the particular case may demand as determined by the Arbitrator. In any case where it is determined that the award should be applied retroactively, except for administrative errors relating to the payment of wages, the maximum period of retroactivity allowed shall be a date not earlier than one hundred and eighty (180) calendar days prior to the initiation of the written grievance in Step One.

Employees who voluntarily terminate their employment will have their grievances immediately withdrawn unless such grievance directly affects their status upon termination or a claim of vested money interest, in which cases the employee may benefit by any later settlement of a grievance in which they were involved.

It is the intent of this provision that employees be made whole in accordance with favorable arbitral findings on the merits of particular disputes, however, all claims for back wages shall be limited to the amount of straight time wages that the employee would otherwise have earned less any unemployment compensation, workers compensation, long term disability compensation, social security, welfare or compensation from any employment or other source received during the period for which back pay is provided; however, earnings from approved supplemental employment shall not be so deducted.

#### **E. Exclusive Procedure.**

The grievance procedure set out above shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes permitted under Civil Service Rules and Regulations. The grievance procedure set out above shall not be used for the adjustment of any dispute for which the Civil Service Rules or Regulations require the exclusive use of a Civil Service forum or procedure.

#### **F. Processing Grievances.**

Whenever possible, the grievant or group grievance representative and the designated MSEA Representative shall utilize non-work time to consult and prepare.

When such preparation is not possible, the grievant or group grievance representative(s) and the designated Representative will be permitted a reasonable amount of time, not to exceed one (1) hour without loss of pay, for consultation and preparation prior to any scheduled grievance step meeting during their regularly scheduled hours of employment. Overtime is not authorized.

One (1) designated Steward and the grievant will be permitted to process a grievance without loss of pay. In a group grievance a Steward or MSEA Representative, and up to two (2) grievants shall be entitled to appear without loss of pay to represent the group. The Steward or MSEA Representative must be employed at one of the work sites represented in the grievance. In group grievances involving more than one Bargaining Unit and/or more than one Department, the group shall be represented by two (2) employee grievants and MSEA Staff and/or attorney.

The Employer is not responsible for compensating any employees for time spent processing grievances outside their regularly scheduled hours of employment. The Employer is not responsible for any travel or subsistence expenses incurred by grievants or Stewards in processing grievances.

### **G. Discipline.**

The parties recognize the authority of the Employer to suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause. A non-probationary employee who alleges that such action was not based on just cause may appeal a demotion, suspension, or discharge taken by the Employer beginning with Step Two of the Grievance Procedure. Probationary employee appeals are limited in accordance with Section A10 above.

### **H. Documents and Witnesses Required For Arbitration.**

Upon written request, MSEA shall receive specific documents or records available from the Employer, in accordance with or not prohibited by law, and pertinent to the grievance under consideration. Discretion permitted under the Freedom of Information Act shall not be impaired by this Section. All documents not previously provided or exchanged which either party intends to use as evidence will be forwarded to the other party on an ongoing basis; however, such response shall not limit either party in the presentation of necessary evidence, nor shall either party be limited from introducing any document or evidence it deems necessary to rebut the case of the other.

At least ten (10) calendar days before a scheduled arbitration hearing, MSEA and the Employer shall simultaneously exchange a written list of the witnesses they plan to call including those witnesses MSEA requests be relieved from duty. Nothing shall preclude the calling of previously unidentified witnesses.

Employees required to testify will be made available without loss of pay; however, whenever possible, they shall be placed on call to minimize time lost from work. Employees who have completed their testimony shall return promptly to work when their testimony is concluded unless they are required to assist the principal MSEA Representative(s) in the conduct of the case. The intent of the parties is to minimize time lost from work.

### **I. Grievance Conduct.**

Employees, Stewards, MSEA Representatives, supervisors and managers shall, throughout the grievance procedure, treat each other with courtesy, and no effort shall be made by either party or its representatives to harass or intimidate the other party or its representatives.

J. Civil Service Rule limitation on the grievance procedure.

The following is not a part of this collective bargaining agreement but is reproduced here for reference purposes only and may be amended, modified or abolished at any time by the civil service commission.



None of the following disputes can be adjudicated in a grievance procedure authorized in a collective bargaining agreement, but can only be adjudicated in a civil service forum under the exclusive procedures provided for in the civil service rules and regulations:

1. A grievance by an employee who is aggrieved by the abolition or creation of a position
2. A grievance by an employee disciplined or denied the use of sick and annual leave for striking.
3. A complaint including, but not limited to, a grievance, technical appeal, or labor relations appeal, against the civil service commission, the department of civil service, or an employee of the department of civil service.
4. A complaint including, but not limited to, a grievance, technical appeal, or labor relations appeal, arising out of or related to a prohibited subject of bargaining.
5. Any matter or dispute in which civil service rules or regulations provide an exclusive procedure or forum for the resolution of the matter or dispute.